

July 18, 1989

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Pre-Merger Office
Federal Trade Commission
6th and Pennsylvania
Room 303
Washington, D.C. 20580

Attention: Ms. Lynn Guelzow

Dear Ms. Guelzow:

The undersigned is writing to request a ruling on whether the contemplated transaction discussed herein is exempt from the filing requirement under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

[REDACTED] ("Seller") has agreed to sell and [REDACTED] ("Buyer") has agreed to purchase the 23.5-acre parcel known as [REDACTED]

(the "Property") for a purchase price of \$64 million. It is possible that the size of the parties and size of the transaction would require filing under the Act. However, we believe that the transaction is exempt from filing because the transaction involves the sale of real estate in the ordinary course of business. We hereby request your opinion on that issue.

The Property consists of land on which is situated a 65-year old hotel building and auxiliary buildings. These properties were used as a hotel until [REDACTED], when the hotel permanently closed its doors. A fence has been erected around the perimeter of the Property to minimize

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vandalism and keep out trespassers. Since [REDACTED] two small apartment buildings (which presently house month-to-month tenants), a rental car operation and a parking lot have been operated. In addition, the hotel building has occasionally been used as a set for filming or taping movies. These operations and tenancies are primarily a means of keeping the Property occupied to avoid vandalism and discourage trespassers.

The Buyer is an entity whose purpose is to redevelop the Property and whose partners are in the business of real estate development. It does not presently intend to reopen the [REDACTED] as it stands on the Property, but rather has contracted to purchase the Property because of the value of the land only. The Buyer's present development plans include a mixed residential and commercial project and demolition of the old hotel building. There is a remote possibility that the [REDACTED] could be landmarked. If this unlikely event occurred (or some other event occurred which would make the Buyer's present development plans unfeasible), the Buyer would be unable to demolish the old hotel building and its development plans would need to be revised. One possible revision could include renovation of the old hotel building. Such a renovation project is unlikely to be undertaken because (i) the type of renovation required to restore the hotel to an operable and safe condition would be very expensive, and (ii) it is unlikely that sufficient occupancy rates required to make such a renovation economically feasible would be realized, given the decline in desirability of the location of the Property for a luxury hotel and the availability of other alternative luxury hotels in the [REDACTED] area.

We believe the issue here is simple: when a Buyer in the business of real estate development purchases real estate on which is situated with an empty building which once was utilized as a hotel, is the transaction exempt as a sale of real estate in the ordinary course of business? Please advise.

Yours very truly,

called on 7-20-89,
The transaction would
be reportable - not in
the ordinary course of
business.

[REDACTED]